IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.466 OF 2005

National Bicycle Corporation of
India Ltd. & anr. ..Petitioners.

Vs.

Ramlakhan Saraji & Ors. ..Respondents.

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Mr.Vishwajit Sawant for the Petitioners.

Mr.S.Z.Choudhary for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

7th March, 2005.

ORAL JUDGMENT :

1. Rule, made returnable forthwith by consent of counsel. Counsel appearing on behalf of the Respondents waives service. By consent, taken up for hearing and final disposal.

2. This Petition is directed against an order of the Industrial Court dated 31st August, 2004 by which the Industrial Court (i) allowed a complaint

under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971; (ii) held that the Petitioner had committed an unfair labour practice by retiring the First Respondent before he attained the age of superannuation; and (iii) directed the Petitioner to pay to the First Respondent his salary for the period between 1st January, 1999 and 31st December, 1999.

3. The Petitioner before the Court is the National Bicycle Corporation of India Limited. Hind Cycles Limited which was run by the Birla Group of Industries had a factory at Worli, Mumbai, in which the manufacture of bicycles and bicycle parts was carried out. The management of the undertaking was taken over by the Government of India in 1974 under the Industries Development Regulation Act. Subsequently, on 15th October, 1980 the Government of India took over the undertaking under the Hind Cycles Limited and Sen-Raleigh Limited Nationalization Act, 1980. The services of the workmen were continued in the employment of the Corporation upon nationalization. Government of India is stated to have taken a decision to close

down the company with effect from 21st January, 2001.

4. The First Respondent joined the employment of Hind Cycles Limited in 1962 at the Worli Factory. At the time of joining service, he stated that his age was 23 years. On 20th May, 1987 a circular was issued by the Petitioner to all employees including the First Respondent. The circular recorded, in so far as the First Respondent was concerned, all particulars relating to his service record including the ticket number, the department and position in which he was employed, the date of appointment, place of birth, caste and educational qualifications. The particulars of service also adverted to the position that in January 1987 the Respondent was 48 years of age. Since the First Respondent had not furnished his exact date of birth when he had joined the service, the entry pertaining to the date of birth was, however, kept blank. Every employee, including the First Respondent, was then informed that the particulars in the service record were as mentioned therein. Employees were informed that if the recording in respect of any entry other than the date of birth

was incorrect, a representation should be submitted to the Personnel Officer. Clause 3 of the circular then provided that in the event that the age or the date of birth had been wrongly recorded, the employee would have to furnish original documents in support of a request for correction, such as the original birth certificate or school leaving certificate on or before 2nd July, 1987, failing which the management would presume that the particulars as were set out in the letter on 20th May, 1987 were correct and after which no further application would be entertained. The circular was signed by the Personnel Officer. At the foot of the aforesaid circular dated 20th May, 1987 the First Respondent signed on 2nd July, 1987 recording that the particulars which were set out in the circular were according to him correct.

5. There is no dispute about the fact that under the certified standing orders the age of retirement in so far as the workmen of the Petitioner are concerned was 60 years. A letter was addressed to the First Respondent on 30th November, 1998 recording that under the rules of the company he would attain the age of superannuation on 1st

January, 1999. On 3rd December, 1998, the First Respondent stated that he was entitled to continue in service until 31st December, 1999 since the year of his birth as mentioned in the service record was 1939. Soon thereafter, in December, 1998, the First Respondent filed a complaint of unfair labour practices under Item 9 of Schedule IV of the Act.

6. Evidence was adduced on behalf of the Petitioner as well as the First Respondent. The proceedings culminated in the impugned order of the Industrial Court.

7. Counsel appearing on behalf of the Petitioner submitted that the Industrial Court has erred in proceeding on the basis that the complaint would be covered by the judgment of a learned Single Judge of the Allahabad High Court in Ahmad Husain v. Managing Director, Uttar Pradesh State Road Transport Corporation (1991 II LLN 1049) and of a learned Single Judge of this Court in Dattu Rama Sawant v. Bharat Textile Mills N.T.C. (S.M.) Ltd. (2004(102)FLR 580). Those were cases where it was held that where the service records do not contain a specific date of birth, but only the year of

birth of the workman, the workman would be entitled to continue in service under the last day of the year of superannuation. In the present case, it was submitted that this principle would not apply since in May 1987 the employer had furnished an opportunity to all the workmen to furnish documentary material for correcting the particulars relating to their service as they appear in the service records. The First Respondent, it was submitted, accepted that in January 1987 he was 48 years of age. Thereafter, for a period of 11 years there was no complaint on the part of the First Respondent. Once the First Respondent had accepted that his age as in January 1987 was 48 years, the action of the management in retiring him on the completion of 60 years with reference to the aforesaid date cannot be faulted and certainly cannot be regarded as an unfair labour practice. This was the submission.

8. On the other hand, counsel appearing on behalf of the First Respondent urged that the particulars that were contained in the circular dated 20th May, 1987 were entered by an officer of the management and since the service records showed the year of

birth as 1939, the First Respondent was entitled to the benefit of the law laid down by the Allahabad High Court and in the judgment of a learned Single Judge of this Court, noted above.

9. There is no dispute about the fact that under the certified standing orders the age of superannuation is 60 years. In the affidavit filed on behalf of the employer in lieu of the examination-in-chief on 7th August, 2004, it was stated that the management had issued a circular in the third week of May 1987 informing all the workmen that they must furnish documentary proof such as a school leaving certificate or any other document that employees may possess for correction of the age or date of birth as on 1st January, 1987. In the present case, it was stated that the First Respondent submitted the form to the company on 26th May, 1987 and certified that the particulars which were contained therein were correct. Therefore, the workman had accepted that in January 1987 he was 48 years of age. Then it was stated that the workman had collected all his legal dues including gratuity without any protest and that the workman who had studied upto 7th

standard was conversant with Hindi, which was the language in which the circular and the particulars contained therein were recorded. The workman stepped into the witness box and in the course of his cross examination he admitted that he had signed a form/circular on 20th May, 1987. The workman admitted that on 30th December, 1998 the company had paid him his retiral dues in full and final settlement and that he had signed a receipt. The workman admitted that the particulars of his place of birth and caste shown in the circular/form were correct and that the Time keeper had asked him for the information. The workman denied that likewise, on being asked by the time keeper of his age in 1987 he had stated it to be 48 years. However, he admitted that the same form had been given to his other colleagues. The workman admitted that he had not disputed until his retirement that he had completed 48 years as on January 1987.

10. On this evidence, the submission of the employer before the Labour Court was that the workman had accepted, as far back as in May/June 1987, that his age as in January 1987 was 48 years.

Despite this, the Labour Court held that the management was in error in retiring the First Respondent on 1st January, 1989 on the ground that he had been superannuated not on completing the age of 60, but at the commencement of the year. The Labour Court was of the view that the matter would be governed by two decisions of Single Judges of the Allahabad High Court and of this Court noted earlier. In the case which came up for consideration before a learned Single Judge of the Allahabad High Court Ahmad Husain v. Managing Director, Uttar Pradesh State Road Transport Corporation (1991 II LLN 1049) the learned Single Judge held that since the year of birth as 1929 had been recorded in the service particulars, the workman was entitled to continue in service on the basis of his having been born on the last day of 1929, this being a benefit which would have to be extended to the weaker section. In the case which came up before a learned Single Judge of this Court (Smt.Nishita Mhatre, J.) Dattu Rama Sawant v. Bharat Textile Mills N.T.C. (S.M.) Ltd. (2004 (102) FLR 580), the workman had been employed with a textile mill as a helper in 1954 and he was informed that he would retire on 1st January, 1989

on completing the age of 60. He was accordingly retired from service on completing the age of sixty. The Labour Court held that assuming the year of birth was 1929, he was entitled to continue in service until the age of 63 years in accordance with Standing Order 20(A) which was applicable to mill workers and that when the exact date of birth was not known the workman ought to have been continued in service until the last day of the year of superannuation. The Industrial Court had interfered with the order of the Labour Court. The learned Single Judge held that in view of the judgment of a Division Bench of this Court in Tata Textile Mills (U.C.) V. Munnilal Nanhoo Yadav (1990(60) FLR 244 (Bom), the workman being a textile mill worker was entitled to continue in service subject to fitness until the age of 63 years and there was no cross examination indicating even a challenge to the efficiency of the workman. The finding of the Labour Court that the workman was entitled to remain in service until the age of 63 years was, therefore, held to be substantiated on the evidence and as being in accordance with law. The Learned Single Judge then held that the finding of the Labour Court that the workman was

entitled to continue in service until the end of the year when only the year of birth had been recorded could not be faulted.

11. Both these decisions are in my view clearly distinguishable. In so far as the facts of the present case are concerned, the Court may proceed on the basis that only the year of birth was recorded when the workman was initially appointed in service. However, in May 1987, an exercise was carried out by the management by which an opportunity was granted to the workmen, an opportunity which was also made available to the First Respondent. The First Respondent was informed that his age as in January 1987 is 48 years. An opportunity was given to the First Respondent to furnish original documents including his date of birth or school leaving certificate if he sought a correction in the date of birth. All the workmen were informed that no application for correction would be entertained after the stipulated period. The First Respondent signed the form on 2nd July, 1987 and accepted the correctness of what was stated therein. Admittedly, thereafter there was no dispute in regard to the date of birth

or the age of the First Respondent as recorded by the management, for nearly 11 years until the superannuation of the First Respondent was imminent and the management addressed a letter to that effect. The judgments of the learned Single Judge of the Allahabad High Court and of the learned Single Judge of this Court would therefore not govern a case such as the present where in May-June 1987 the age of the workman came to be fixed in pursuance of an exercise that was carried out by the management. The workman had in the course of that exercise a fair opportunity to get his date of birth corrected but the workman certified the correctness of the particulars and his acceptance thereof as correct. At any rate, there was no material to indicate the commission of an unfair labour practice as would warrant the invocation of jurisdiction under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The workman admitted that he had collected his retiral dues and that he had furnished a receipt in full and final settlement.

12. The order of the Industrial Court is, in these

circumstances, patently unsustainable and warrants the interference of this Court. The order ignores the material evidence and suffers from an error apparent on the face of the record. The interference of this Court under Article 226 is in the circumstances warranted. The Petition is allowed. The impugned order of the Industrial Court dated 31st August, 2004 is quashed and set aside. Complaint (ULP) 1529 of 1998 shall in the circumstances stand dismissed. There shall be no order as to costs.